

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

JUN 10 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re

JERRY SZOKA
Cleveland, OhioOrder to Show Cause Why a
Cease and Desist Order Should Not Issue

CIB Docket No. 98-48

To: Joseph Chachkin
Chief Administrative Law Judge

COMPLIANCE AND INFORMATION BUREAU'S
MOTION FOR SUMMARY DECISION

1. The Chief, Compliance and Information Bureau ("Bureau"), pursuant to Section 1.251 of the Commission's Rules, 47 C.F.R. § 1.251, hereby moves for summary decision on the issues specified. As demonstrated herein, there is no genuine issue of material fact for determination at hearing.

2. The *Order to Show Cause and Notice of Opportunity for Hearing*, FCC 98-64, released April 6, 1998 ("*Show Cause Order*"), commencing this proceeding specified two issues:

1. To determine whether Jerry Szoka has transmitted radio energy without appropriate authorization in violation of Section 301 of the Act.
2. To determine whether, based on the evidence adduced pursuant to the preceding issue, Jerry Szoka should be ordered to cease and desist from violating Section 301 of the Act.

The *Show Cause Order* also provides that, without regard to the issuance of a cease and

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desist order, it should also be determined whether Jerry Szoka should forfeit \$11,000 for violations of Section 301 of the Act.

3. The attached "Compliance and Information Bureau's Request for Admission of Facts and Genuineness of Documents" ("admissions request") (attached hereto as Exhibit 1), "Answers to Compliance and Information Bureau's Request for Admission of Facts and Genuineness of Documents" ("answers") (attached hereto as Exhibit 2), and declarations (attached hereto as Exhibits 3, 4, and 5) reflect the following facts. Jerry Szoka ("Szoka") is the owner and/or operator of "The Grid," a nightclub located at 1281 West 9th Street, Cleveland, Ohio. From November 4, 1996, to the present, Szoka has operated an FM radio station known as "The Grid" at 1281 West 9th Street, Cleveland, Ohio. "The Grid" transmits on 96.9 MHz.

4. Szoka does not hold an authorization from this Commission to transmit radio energy on 96.9 MHz at Cleveland, Ohio. Notwithstanding the absence of any authorization from this Commission, Szoka has transmitted at a signal strength which has uniformly exceeded 250 microvolts/meter at 3 meters. Broadcasts that exceed 250 microvolts/meter at 3 meters require a license. Despite having received two written warnings, in February and June 1997, from James A. Bridgewater, the Detroit Field Office Director of the Commission's Compliance and Information Bureau, that his operation of a radio station on 96.9 MHz violated Section 301 of the Communications Act, Szoka has refused to stop operating the station.

5. Section 301 of the Communications Act of 1934, as amended (the "Act"), 47

U.S.C. § 301, provides in pertinent part that no person shall operate any apparatus for the transmission of communications by radio from one place in any state to another place in the same state without a license from this Commission. The only pertinent exception to this blanket restriction for operation in the FM frequency band (88 MHz to 108 MHz) is found in Part 15 of the Commission's Rules, specifically, Section 15.239(b), 47 C.F.R. § 15.239(b), which provides that the field strength of any such emissions shall not exceed 250 microvolts/meter at 3 meters.

6. Section 1.251 of the Commission's Rules provides that the presiding judge may grant a motion for summary decision only in the absence of a genuine issue of material fact for determination at the hearing. *See New Broadcasting Corp.*, 44 FCC 2d 386 (Rev. Bd. 1973). In order to sustain such a motion, the burden is on the moving party to demonstrate that no genuine issue as to any material fact remains and that it is otherwise entitled to summary decision. Therefore, it must be established that "the truth is clear," that "the basic facts are undisputed," and that "the parties are not in disagreement regarding material factual inferences that may be properly drawn from such facts." *Big Country Radio, Inc.*, 50 FCC 2d 967 (Rev. Bd. 1975). It is the Bureau's position that no genuine issues of any material fact remain.

7. Issue (1) seeks to determine whether Szoka has transmitted radio energy without appropriate authorization in violation of Section 301 of the Act. As the foregoing demonstrates, Szoka has willfully and repeatedly transmitted radio energy within the State of Ohio. He had and has no authorization to do so. Finally, the power used was in excess of that specified in Part 15 of the Commission's Rules. Accordingly, issue (1) should be


resolved against Szoka.

8. Issue (2) seeks to determine whether Szoka should be ordered to cease and desist from violating Section 301 of the Act. The foregoing makes clear that Szoka has willfully and repeatedly violated Section 301, and there is no evidence which would mitigate the impact of these actions. Szoka has decided for himself what radio transmissions he can make; however, the law is otherwise. He should be ordered to stop violating Section 301 of the Act. Accordingly, issue (2) should be resolved against Szoka.

9. Finally, a forfeiture is warranted. Szoka's violations of Section 301 of the Act have been willful and repeated. Those violations have occurred despite explicit and repeated warnings from the Commission, and they have occurred for more than an entire year. Szoka is essentially daring this agency to stop him. His conduct is illegal, unacceptable and should not be condoned or excused in any manner. Considering Szoka's behavior in light of the pertinent factors set forth in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D), the Bureau submits that the maximum amount of forfeiture set by the Show Cause Order should

be imposed. Accordingly, in addition to the cease and desist order, the Bureau requests that the presiding judge also impose a forfeiture of \$11,000 on Szoka.

Respectfully submitted,
Richard Lee
Chief, Compliance and Information Bureau


Pamera D. Hairston
Chief, Compliance Division

W. Riley Hollingsworth
Attorney

Federal Communications Commission
1919 M Street, N.W., Suite 744
Washington, D.C. 20554
(202) 418-1166

June 10, 1998

(Exhibits)

CERTIFICATE OF SERVICE

I, Deborah Hannah, certify that I have, on this 10th day of June, 1998, sent by regular United States mail, a copy of the foregoing, "Compliance and Information Bureau's Motion for Summary Decision" to:

Jerry Szoka
1281 West 9th Street
Cleveland, OH 44113

Chief Administrative Law Judge Joseph Chachkin
Federal Communications Commission
2000 L Street, N.W., Suite 226
Washington, D.C. 20554


Deborah Hannah

EXHIBIT 1
REQUEST FOR ADMISSIONS

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re

JERRY SZOKA
Cleveland, Ohio

CIB Docket No. 98-48

Order to Show Cause Why a
Cease and Desist Order Should Not Be Issued

To: Jerry Szoka
The Grid
1281 West 9th Street
Cleveland, Ohio 44113

**COMPLIANCE AND INFORMATION BUREAU'S
REQUEST FOR ADMISSION OF FACTS AND GENUINENESS OF DOCUMENTS**

The Chief, Compliance and Information Bureau ("CIB"), pursuant to Section 1.246 of the Commission's Rules, hereby requests that, within 10 days from receipt of this request, Jerry Szoka ("Szoka") admit to the truth of facts and admit to the genuineness of documents, as set forth in the following numbered paragraphs. Each response should correspond and be identified with the same number listed in the Requested Admissions section below. The pleading containing the responses should be made under oath or affirmation by the person providing the response. In addition, Szoka is reminded that Section 1.246(b) of the rules provides that "[a] denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder." A copy of the pleading submitted in response to the Requested Admissions is to be served upon the presiding officer as well as the attorneys representing the Chief, Compliance and Information Bureau in accordance with Sections 1.47 and 1.246 of the Commission's Rules (a

copy of both are enclosed).

Requested Admissions

1. Szoka is the owner and/or operator of "The Grid," a nightclub located at 1281 West 9th Street, Cleveland, Ohio.

2. From November 4, 1996, to the present, Szoka, and/or one or more individuals under his direction or control, have operated a radio station known as "The Grid" at 1281 West 9th Street, Cleveland, Ohio.

3. From November 4, 1996, to the present, "The Grid" radio station has transmitted its signal on 96.9 MHz.

4. From November 4, 1996, to the present, "The Grid's" signal strength uniformly has exceeded 250 microvolts/meter at 3 meters.

5. From November 4, 1996, to the present, neither Szoka nor anyone under his direction or control has held an authorization from the Federal Communications Commission ("FCC") to generate and emit radio frequency energy on 96.9 MHz at Cleveland, Ohio.

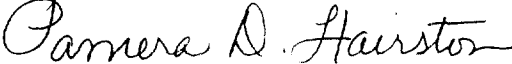
6. On February 20, 1997, Szoka was advised by letter from James A. Bridgewater ("Bridgewater"), the Detroit Field Office Director of the Commission's Compliance and Information Bureau, that operation of "The Grid" radio station violated Section 301 of the Act and ordered to cease operation.


7. Szoka received a copy of the February 20, 1997, letter identified herein as Attachment A.

8. On March 26, 1997, Szoka wrote a letter to the Commission, herein identified as Attachment B, in which he acknowledged receipt of Attachment A and stated that he would take necessary actions to meet FCC requirements.

9. Szoka refused to obey the written order referred to in Admission Request 6.
10. On June 11, 1997, Bridgewater again advised Szoka, in writing, that operation of "The Grid" radio station violated Section 301 of the Act.
11. Szoka received a copy of the June 11, 1997, letter identified herein as Attachment C.
12. Szoka did not respond to Attachment C.

Respectfully submitted,
Richard Lee
Chief, Compliance and Information Bureau


Pamera D. Hairston
Chief, Compliance Division


Jacqueline E. Ellington
W. Riley Hollingsworth
Attorneys

Federal Communications Commission
2025 M Street, N.W., Suite 8210
Washington, D.C. 20554
(202) 418-1430

May 11, 1998

CERTIFICATE OF SERVICE

I, CurTrisha Banks, certify that I have, on this 11th day of May, 1998, sent by certified mail, return receipt requested, and by regular United States mail, a copy of the foregoing, "Compliance and Information Bureau's Request for Admission of Facts and Genuineness of Documents" to:

Jerry Szoka
The Grid
1281 West 9th Street
Cleveland, Ohio 44113

Administrative Law Judge Joseph Chachkin
Federal Communications Commission
2000 L Street, N.W., Suite 226
Washington, D.C. 20554

CurTrisha Banks

EXHIBIT 2

CETIFIED MAIL NO: P538130836
RETURN RECEIPT REQUESTED

February 20, 1997

The Grid
1281 West 9th Street
Cleveland, Ohio 44113

Refer To File: 97-DT-0053

Dear Sir:

An investigation by FCC Detroit has determined that you have radio transmitting equipment capable of operating on the frequency of 96.9 MHz which is allocated for use in the FM Broadcast Service.

Your attention is directed to the provisions of the Communications Act of 1934, as amended, and the Commission's Rules and Regulations governing the operation of radio transmitting equipment. Operation of a radio transmitter without a valid radio station authorization is a violation of Section 301 of the Communications Act of 1934, as amended. Unlicensed operation may subject the operator to penalties as provided in Section 501 of the Act, including for a first offense, a maximum fine of \$10,000 or one year imprisonment, or both; and for subsequent offenses, a maximum fine of \$10,000 or two years imprisonment, or both. Because unlicensed operation creates a definite danger of interference to important radio communications services and may subject the operator to the penalties provided for in the Communications Act, the importance of complying strictly with the legal requirements mentioned above is emphasized.

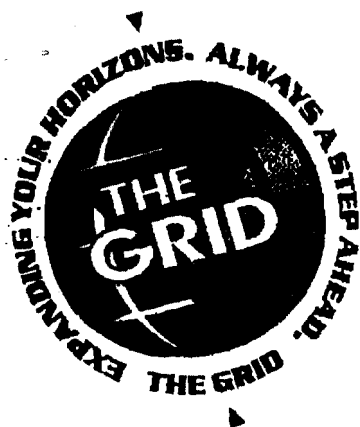
You are required to submit a response to this letter, within 15 days after receipt of this letter. All information before us at that time will be used to determine if any further action will be taken.

Sincerely,



District Director

JAB:PGP:sms



216-623-0113 ▲

1281 WEST 9th STREET CLEVELAND, OH 44113 ▲

WEBSITE: [HTTP://MEMBERS.AOL.COM/CLUBGRID](http://members.aol.com/clubgrid) ▲

EXHIBIT 3

March 26, 1997

James A. Bridgewater
District Director

Your letter was received concerning 96.9 F.M. and we will take the necessary actions to meet your requirements. But first:

Have you heard the station? It is top quality and there are no commercials. It truly is the best music in the City of Cleveland. I really find it difficult to understand why anyone in any position would want to shut down a fabulous station like 96.9 when it is not interfering with anyone on any other frequency and it is fulfilling a much needed community service.

Why would you want to do this? Other than a silly little piece of paper that the F.C.C. issues to license a station, if that station in question is serving a much needed community service, has excellent quality equipment, does not broadcast objectional material and plays music that no other station will, than why would one want to close it down?

Is the station hurting anyone? No

Is that station interfering with anyone else? No

Does the station have knowledgeable people to operate the equipment? Yes

Do they broadcast material that the listening audience would find objectional? No

Do they broadcast to a listening audience that no other station in the area satisfies? Yes

Have you had any complaints from other broadcasters that the signal from 96.9 F.M. is interfering with their signal? No

I'm sure your an intelligent man and if you would allow yourself to see my point of view you would begin to see that we really are not out to harm anyone, or to be a nuisance on the air. We are just regular people who are broadcasting on an unused frequency some great music that no one else will play, and we have no commercials.



216-623-0113 ▲

1281 WEST 9th STREET CLEVELAND, OH 44113 ▲

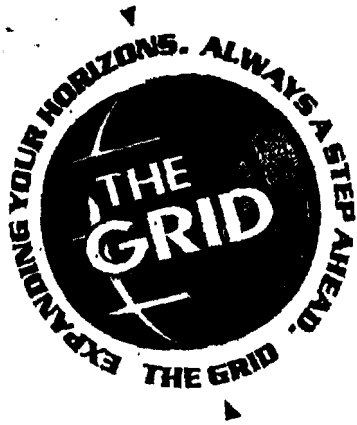
WEBSITE: [HTTP://MEMBERS.AOL.COM/CLUBGRID](http://members.aol.com/clubgrid) ▲

I realize that you are doing your job. And that you have the power behind you to really make things for me quite unpleasant. But off the record, just step outside of your job for a moment and you don't work for the F.C.C. I'm sure your no different that anyone else when your driving around and you want to here some good music on the radio and you get so frustrated flipping through the channels for something good on that you want to through the damn thing out the window. I hate this music, I hate that music, this one has commercials on, this one has a babbling idiot for a dj on. Then you hear about or come across this station that plays nothing but music. No idiot dj's, no commercials. Just great music that you like. Wouldn't you hope that they stay on the air? Wouldn't you tell your friends about this cool station that just plays music with no interruptions? I would. And that is exactly what has happened.

We have a huge audience! We take great pride in what we do and that we offer something that no other station does.

You know what I think. I think that someone at one of the big stations has a bug up his you know what and is jealous or something. May I ask you something? Did the party who complained to you about us have a legitimate complaint. I mean other than the fact that we do not have a license. A license that the F.C.C. does not issue anyway. Did they say we were interfering with anyone, or broadcasting something offensive. God forbid we should get listed by arbotron somehow. Not that I care one way or the other. But can you imagine our little station having such an impact that we actually did get a share of the listening audience and got an arbotron rating. I would die laughing. We are not even trying and we get listed. But I'm quite sure that we do have a large listening audience and we do fulfill a nitch in the community that is much needed.

I really don't know what else to say except, give us a listen. Don't make us close up shop. Like I said earlier, we are just regular people and we are trying to make a difference in this little place we all call earth. If we were interfering with someone else or swearing or broadcasting crap on the air, well I too would want to see that station off the air. Hell there are plenty of legitimate stations all around I would love to see go off the air.



216-623-0113 ▲

1281 WEST 9th STREET CLEVELAND, OH 44113 ▲

WEBSITE: [HTTP://MEMBERS.AOL.COM/CLUBGRID](http://members.aol.com/clubgrid) ▲

I know you can turn the other cheek and ignore us until such a time that we are interfering with someone else or not continuing to follow our high standards in broadcasting great music. Fat chance! We will always strive to do our best at providing this community the finest in dance music with no commercials. So can you? Will you? Will you look at the facts surrounding our little station (other than the license issue). I'm sure that if you do, you will see for yourself that, hey, I don't know what all the fuss is about. It's a good quality signal, not over modulating, like most of the big stations do continuously, they do seem to reach an audience that no one else is reaching, and we only broadcast at night, plus the best part, NO COMMERCIALS!

Thank You,
Jerry Szoka

EXHIBIT 4

CERTIFIED MAIL NO: P538130928
RETURNED RECEIPT REQUESTED

June 11, 1997

Jerry Szoka
The Grid
1281 West 9th Street
Cleveland, Ohio 44113

Refer To File: 97-DT-0053

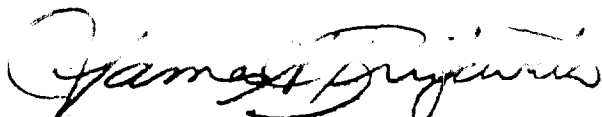
Dear Mr. Szoka:

Our office continues to receive reports of continued operation by you on the frequency 96.9 MHz. Furthermore, your response to our February 20, 1997 correspondence was unacceptable.

Once again, your attention is directed to the provisions of the Communications Act of 1934, as amended, and the Commission's Rules and Regulations governing the operation of radio transmitting equipment. Operation of a radio transmitter without a valid station authorization is a violation of Section 201 of the Communications Act of 1934, as amended. Unlicensed operation may subject the operator to penalties as provided in Section 501 of the Act, including for a first offense, a maximum fine of \$10,000 or one year imprisonment, or both; and for subsequent offenses, a maximum fine of \$10,000 or two years imprisonment, or both. Because unlicensed operation creates a definite danger of interference to important radio communications services and may subject the operator to the penalties provided for in the Communications Act, the importance of complying strictly with the legal requirements mentioned above is emphasized.

You are again required to submit a response to this letter, within 15 days after receipt of this letter. All information before us at that time will be used to determine if any further action will be taken.

Sincerely,


James A. Bridgewater
District Director

JAB:PGP:sms

Commission may rule *ex parte* upon request for continuances and extensions, requests for permission to file in excess of the length permitted in this chapter, and requests for temporary relief, without waiting for filing of oppositions or replies.

Where specific provisions contained in conflict with this section, those provisions are controlling. See, in part, §§ 1.294(c), 1.298(a), and 1.773.

2415 Nov. 22, 1963, as amended at 33 May 15, 1968, 45 FR 64190, Sept. 29, FR 31032, July 26, 1989; 54 FR 37682, 1989]

Motions for extension of time.

It is the policy of the Commission that extensions of time shall not be readily granted.

Motions for extension of time in order to file responses to petitions for rulemaking, replies to such responses, and comments filed in response to notice of proposed rulemaking, replies to such comments and other papers in rulemaking proceedings conducted under

Part C of this part shall be filed at least 10 days before the filing date. If a motion is denied, the responses, comments, replies thereto, or other papers need not be filed until 25 days after the Commission denies the motion. In emergency situations the Commission will consider a motion for a brief extension related to the duration of the proceeding and will consider motions for acceptance of comments, reply papers or other papers filed after the filing date.

A motion for extension of time in order to file papers in proceedings other than notice and comment rulemaking proceedings is filed less than 7 days prior to the day for filing the papers. The party filing the motion shall notify the Commission staff personnel responsible for acting on the motion that the motion has been (or is being) filed.

3301, Dec. 12, 1974, as amended at 41 Mar. 5, 1976; 41 FR 14871 Apr. 8, 1976; 48 FR 10671 June 5, 1977]

§ 1.47 Service of documents and proof of service.

(a) Where the Commission or any person is required by statute or by the provisions of this chapter to serve any document upon any person, service shall (in the absence of specific provisions in this chapter to the contrary) be made in accordance with the provisions of this section.

(b) Where any person is required to serve any document filed with the Commission, service shall be made by that person or by his representative on or before the day on which the document is filed: *Provided, however*, That formal complaints filed under section 208 of the Communications Act will be served by the Commission.

(c) Commission counsel who formally participate in any proceeding shall be served in the same manner as other persons who participate in that proceeding. The filing of a document with the Commission does not constitute service upon Commission counsel.

(d) Documents may be served upon a party, his attorney, or other duly constituted agent by delivering a copy or by mailing a copy to the last known address. When a party is represented by an attorney of record in a formal proceeding, service shall be made upon such attorney.

(e) Delivery of a copy pursuant to this section means handing it to the party, his attorney, or other duly constituted agent; or leaving it with the clerk or other person in charge of the office of the person being served; or, if there is no one in charge of such office, leaving it in a conspicuous place therein; or, if such office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(f) Service by mail is complete upon mailing.

(g) Proof of service, as provided in this section, shall be filed before action is taken. The proof of service shall show the time and manner of service, and may be by written acknowledgment of service, by certificate of the person effecting the service, or by other proof satisfactory to the Commission. Failure to make proof of service

will not affect the validity of the service. The Commission may allow the proof to be amended or supplied at any time, unless to do so would result in material prejudice to a party.

[28 FR 12415, Nov. 22, 1963, as amended at 40 FR 55644, Dec. 1, 1975; 53 FR 11852, Apr. 11, 1988]

§ 1.48 Length of pleadings.

(a) Affidavits, statements, tables of contents and summaries of filings, and other materials which are submitted with and factually support a pleading are not counted in determining the length of the pleading. If other materials are submitted with a pleading, they will be counted in determining its length; and if the length of the pleadings, as so computed, is greater than permitted by the provisions of this chapter, the pleading will be returned without consideration.

(b) It is the policy of the Commission that requests for permission to file pleadings in excess of the length prescribed by the provisions of this chapter shall not be routinely granted. Where the filing period is 10 days or less, the request shall be made within 2 business days after the period begins to run. Where the period is more than 10 days, the request shall be filed at least 10 days before the filing date. (See § 1.4.) If a timely request is made, the pleading need not be filed earlier than 2 business days after the Commission acts upon the request.

[41 FR 14871, Apr. 8, 1976, and 49 FR 40169, Oct. 15, 1984]

§ 1.49 Specifications as to pleadings and documents.

(a) All pleadings and documents filed in any Commission proceeding shall be typewritten or prepared by mechanical processing methods, and shall be filed on A4 (21 cm. x 29.7 cm.) or on 8½ x 11 inch (21.6 cm. x 27.9 cm.) paper with the margins set so that the printed material does not exceed 6½ x 9½ inches (16.5 cm. x 24.1 cm.). The printed material may be in any typeface of at least 12-point (0.42333 cm. or 1½⁄16") in height. The body of the text must be double spaced with a minimum distance of 1/8 of an inch (0.5556 cm.) between each line of text. Footnotes and long, indented quotations may be single

of personal bias or other disqualification.

(1) The person seeking disqualification shall file with the presiding officer an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. Such affidavit shall be filed not later than 5 days before the commencement of the hearing unless, for good cause shown, additional time is necessary.

(2) The presiding officer may file a response to the affidavit; and if he believes himself not disqualified, shall so rule and proceed with the hearing.

(3) The person seeking disqualification may appeal a ruling of disqualification, and, in that event, shall do so at the time the ruling is made. Unless an appeal of the ruling is filed at this time, the right to request withdrawal of the presiding officer shall be deemed waived.

(4) If an appeal of the ruling is filed, the presiding officer shall certify the question, together with the affidavit and any response filed in connection therewith, to the Commission. The hearing shall be suspended pending a ruling on the question by the Commission.

(5) The Commission may rule on the question without hearing, or it may require testimony or argument on the issues raised.

(6) The affidavit, response, testimony or argument thereon, and the Commission's decision shall be part of the record in the case.

(5 U.S.C. 556)

(28 FR 12425, Nov. 22, 1963, as amended at 55 FR 36641, Sept. 6, 1990; 62 FR 4171, Jan. 29, 1997)

PREHEARING PROCEDURES

§ 1.246 Admission of facts and genuineness of documents.

(a) Within 20 days after the time for filing a notice of appearance has expired; or within 20 days after the release of an order adding parties to the proceeding (see §§ 1.223 and 1.227) or changing the issues (see § 1.229); or within such shorter or longer time as the presiding officer may allow on motion or notice, a party may serve upon any other party a written request for the admission by the latter of the

genuineness of any relevant documents identified in and exhibited by a clear copy with the request or of the truth of any relevant matters of fact set forth in the request.

(b) Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than 10 days after service thereof, or within such shorter or longer time as the presiding officer may allow on motion or notice, the party to whom the request is directed serves upon the party requesting the admission either: (1) A sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters, or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder.

(c) A copy of the request and of any answer shall be served by the party filing on all other parties to the proceeding and upon the presiding officer.

(d) Written objections to the requested admissions may be ruled upon by the presiding officer without additional pleadings.

(33 FR 163, Jan. 12, 1968, as amended at 35 FR 37333, Nov. 11, 1970)

§ 1.248 Prehearing conferences; hearing conferences.

(a) The Commission, on its own initiative or at the request of any party, may direct the parties or their attorneys to appear at a specified time and place for a conference prior to a hearing, or to submit suggestions in writing, for the purpose of considering, among other things, the matters set forth in paragraph (c) of this section. The initial prehearing conference shall

EXHIBIT 2
ANSWERS TO REQUEST FOR
ADMISSIONS

RECEIVED

May 21st. 1998

JUN 2 8 57 AM '98

In Re

CIB Docket No. 98-48

To: Presiding Officer; Chief, Compliance and Information Bureau:

To: Attorneys representing; Chief, Compliance and Information Bureau:

From: Jerry Szoka

1281 W9th St.

Cleveland, Oh 44113

Answers to Compliance and Information Bureau's Request for Admission of Facts and Genuineness of Documents.

1. True
2. False. I alone have operated the radio station.
3. True
4. True
5. True
6. I was sent a letter telling me that I was in violation of Sec. 301, but was not ordered to cease operations. I have never been ordered to cease operations.
7. True
8. True
9. What written order is being referred to?
10. True
11. True
12. True

cc: Secretary of The Commission 1 Original & 6 copies

: Jacqueline E. Ellington, Attorney

FCC

2025 M St. N.W. Suite 8210

Washington D.C. 20554

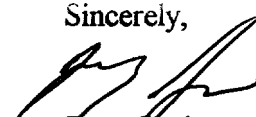
: Administrative Law Judge Joseph Chachkin

FCC

2000 L St. Suite 226

Washington, D.C. 20554

Sincerely,



Jerry Szoka

May 21, 1998

CIB Docket No.98-48

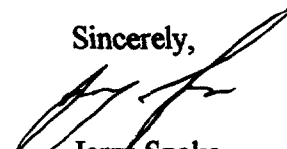
Administrative Law Judge Joseph Chachkin:

It has come to my attention that a phone conference is available to me in place of me actually appearing in Washington. This would be of great service to me at this time, due to other legal obligations I must attend on May 27th and May 28th.

I respectfully request a motion for the pre-hearing conference to take place over the phone the morning of May 27th. I will need to be notified as to when I need to be at the phone.

Thank You in advance for you consideration in this matter.

Sincerely,



Jerry Szoka

1281 W 9th Street
Cleveland, Ohio 44113
216-623-0113
216-664-9098-pager

cc: Jacqueline E. Ellington Attorney
FCC
2025 M St. N.W. Suite 8210
Washington D.C. 20554

: Pamera D. Hairston
Chief, Compliance Division
FCC
2025 M St. N.W. Suite 8210
Washington D.C. 20554

EXHIBIT 3
BRIDGEWATER DECLARATION

Declaration Under Penalty of Perjury

1. My name is James A. Bridgewater.
2. I am an employee of the Federal Communications Commission ("FCC"). I am the District Director of the FCC's Compliance and Information Bureau ("CIB"), Detroit, Michigan, Office. I am making this declaration in support of a CIB motion for summary decision with respect to an order to show cause directed against Jerry Szoka ("Szoka").
3. In conjunction with an investigation conducted by the FCC Detroit Office concerning Szoka, I wrote and signed a warning letter to Szoka, dated February 20, 1997, regarding an unlicensed radio operation on the frequency of 96.9 MHz. That letter is attached hereto and identified as Attachment A.
4. I received an unsigned response to the February 20, 1997, warning letter from Szoka, dated March 26, 1997. That letter is attached hereto and identified as Attachment B.
5. Also, in conjunction with this investigation, I wrote and signed a second warning letter to Szoka, dated June 11, 1997, which is attached hereto and identified as Attachment C.
6. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 8, 1998.

A handwritten signature in black ink, reading "James A. Bridgewater". The signature is written in a cursive, flowing style with a large initial "J".

James A. Bridgewater
District Director
Compliance and Information Bureau
Detroit, Michigan Office

ATTACHMENT A

CETIFIED MAIL NO: P538130836
RETURN RECEIPT REQUESTED

February 20, 1997

The Grid
1281 West 9th Street
Cleveland, Ohio 44113

Refer To File: 97-DT-0053

Dear Sir:

An investigation by FCC Detroit has determined that you have radio transmitting equipment capable of operating on the frequency of 96.9 MHz which is allocated for use in the FM Broadcast Service.

Your attention is directed to the provisions of the Communications Act of 1934, as amended, and the Commission's Rules and Regulations governing the operation of radio transmitting equipment. Operation of a radio transmitter without a valid radio station authorization is a violation of Section 301 of the Communications Act of 1934, as amended. Unlicensed operation may subject the operator to penalties as provided in Section 501 of the Act, including for a first offense, a maximum fine of \$10,000 or one year imprisonment, or both; and for subsequent offenses, a maximum fine of \$10,000 or two years imprisonment, or both. Because unlicensed operation creates a definite danger of interference to important radio communications services and may subject the operator to the penalties provided for in the Communications Act, the importance of complying strictly with the legal requirements mentioned above is emphasized.

You are required to submit a response to this letter, within 15 days after receipt of this letter. All information before us at that time will be used to determine if any further action will be taken.

Sincerely,

A handwritten signature in cursive script, appearing to read "James A. Bridgewater".

James A. Bridgewater
District Director

JAB:PGP:sms